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28 **UNITED STATES DISTRICT COURT**

1 **DISTRICT OF NEW MEXICO**

2 JONATHAN STRICKLAND, an individual, 3 4 Plaintiff, 5 vs. 6 CITY OF LAS CRUCES, a municipal 7 entity; JOSHUA SAVAGE, individually and 8 in his official capacity as a sergeant for the 9 Las Cruces Police Department; MANUEL 10 FRIAS, individually and in his official 11 capacity as a police officer for the Las	12 CASE NO.: 13 14 COMPLAINT FOR DAMAGES 15 16 42 U.S.C. § 1983: Fourth and Fourteenth 17 Amendments 18 Pendent Tort Claims 19 20 JURY TRIAL DEMANDED 21
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Defendants.

INTRODUCTION

1. This civil rights case arises out of the unjustified shooting of Jonathan Strickland by Sergeant Joshua Savage and Officers Manuel Frias, Nathan Krause, Daniel Benoit, and Anthony Lucero of the Las Cruces Police Department. On March 11, 2021, Mr. Strickland sustained permanent, life-threatening injuries after officers – armed with semi-automatic weapons – fired over ninety (90) lethal rounds in rapid succession at Mr. Strickland’s truck following a terminated vehicle pursuit. Mr. Strickland suffered nearly a dozen gunshot wounds.

2. Defendants' conduct was heinous and intolerable. Mr. Strickland posed no threat to the safety of any officer or other. Mr. Strickland was unarmed, and his truck immobilized, when Defendant Officers berated Mr. Strickland's truck with bullets. The Defendant Officers' actions were unreasonable and grossly excessive under the circumstances.

3. Accordingly, this action seeks compensatory and punitive damages from Defendants for flagrantly violating several of Mr. Strickland's rights under the United States Constitution and state law in connection with the egregious force inflicted upon Mr. Strickland.

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JURISDICTION AND VENUE

4. This action arises under Title 42 of the United States Code, § 1983. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343 based on 42 U.S.C. § 1983 and questions of federal constitutional law. The unlawful acts and practices alleged herein occurred in the City of Las Cruces, New Mexico, which is within the judicial district of this Court. This Court also has supplemental jurisdiction over Plaintiff's state law causes of action under 28 U.S.C. § 1337.

5. Venue is proper in this Court under 28 U.S.C. § 1331(b) because Defendants are believed to reside in this district and all incidents, events, and occurrences giving rise to this action occurred within this district.

PARTIES

6. Plaintiff JONATHAN STRICKLAND (hereinafter "Plaintiff" or "Mr. Strickland") is and was at all times mentioned herein, an individual residing in the state of New Mexico and is a United States Citizen.

7. Defendant JOSHUA SAVAGE (hereinafter "Defendant Savage") is and was at all times mentioned herein, a sergeant for the Las Cruces Police Department, and is sued individually and in his official capacity.

8. Defendant MANUEL FRIAS (hereinafter “Defendant Frias”) is and was at all times mentioned herein, a police officer for the Las Cruces Police Department, and is sued individually and in his official capacity.

9. Defendant NATHAN KRAUSE (hereinafter “Defendant Krause”) is and was at all times mentioned herein, a police officer for the Las Cruces Police Department, and is sued individually and in his official capacity.

10. Defendant DANIEL BENOIT (hereinafter “Defendant Benoit”) is and was at all times mentioned herein, a police officer for the Las Cruces Police Department, and is sued individually and in his official capacity.

11. Defendant ANTHONY LUCERO (hereinafter "Defendant Lucero") is and was at all times mentioned herein, a police officer for the Las Cruces Police Department, and is sued individually and in his official capacity.

1 12. Defendant CITY OF LAS CRUCES (hereinafter “Defendant City”) is and was at
2 all times mentioned herein, a municipal entity or political subdivision of the United States,
3 organized and existing under the laws of the State of New Mexico; and at all times mentioned
4 herein, Defendant City has possessed the power and authority to adopt policies and prescribe
5 rules, regulations, and practices affecting the operation of the City of Las Cruces Police
6 Department and its tactics, methods, practices, customs, and usage. At all relevant times
7 mentioned herein, Defendant City is and was the employer of Defendants Savage, Frias, Krause,
8 Benoit, Lucero, and DOES 1 through 50, inclusive, (hereinafter, collectively, “Defendant DOE
9 Officers”), individually and in their official capacities as police officers for the City of Las Cruces
10 Police Department.

12 13. Plaintiff is ignorant of the true names and capacities of those Defendants named
13 herein as DOES 1 through 25, inclusive. Plaintiff will amend this Complaint to allege said
14 Defendants’ true names and capacities when that information becomes known to Plaintiff. Plaintiff
15 is informed and believes, and thereon alleges, that DOES 1 through 25, inclusive, are legally
16 responsible and liable for the incident, injuries and damages hereinafter set forth, and that each of
17 said Defendants proximately caused the injuries and damages by reason of negligent, careless,
18 deliberately indifferent, intentional, or willful misconduct, including the negligent, careless,
19 deliberately indifferent, intentional, willful misconduct in creating and otherwise causing the
20 incidents, conditions, and circumstances hereinafter set forth, or by reason of direct or imputed
21 negligence or vicarious fault or breach of duty arising out of the matters herein alleged. Plaintiff
22 will seek to amend this Complaint to set forth said true names and identities of DOES 1 through
23 25, inclusive, when they have been ascertained.

24 14. Plaintiff is ignorant of the true names and capacities of Defendants DOES 26
25 through 50, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff is
26 informed and believes, and thereon alleges, that each Defendant so named was employed by
27 Defendant City at the time of the conduct alleged herein. Plaintiff alleges that each of Defendants
28 DOES 26 through 50 were responsible for the training, supervision and/or conduct of the police

1 officers and/or agents involved in the conduct alleged herein. Plaintiff alleges that each of the
 2 Defendants DOES 26 through 50 were also responsible for and caused the acts and injuries alleged
 3 herein. Plaintiff will amend this Complaint to state the names and capacities of DOES 26 through
 4 50, inclusive, when they have been ascertained.

ADMINISTRATIVE PREREQUISITES

5 15. Plaintiff is required to comply with the administrative procedures set forth in the
 6 New Mexico Tort Claims Act. Plaintiff filed a claim against the City of Las Cruces on March 18,
 7 2021. Plaintiff therefore exhausted all administrative remedies pursuant to Chapter 41, Article 4,
 8 section 16 of the New Mexico Statutes.

PRELIMINARY ALLEGATIONS

9 16. The City of Las Cruces is a public entity and is being sued under Title 42 U.S.C. §
 10 1983 for violations of the Fourth and Fourteenth Amendments of the United States Constitution,
 11 New Mexico state law, the New Mexico Tort Claims Act, and the Government Code, for the acts
 12 and omissions of Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1 through 50, and
 13 each of them, who at the time they caused Plaintiff's injuries and damages, were duly appointed,
 14 qualified and acting, officers, employees, and/or agents of Defendant City, and acting within the
 15 course and scope of their employment and/or agency.

16 17. Each of the Defendants caused and is responsible for, the unlawful conduct and
 17 resulting harm by, inter alia, personally participating in the conduct, or acting jointly and in concert
 18 with others who did so, by authorizing, acquiescing, condoning, acting, omitting or failing to take
 19 action to prevent the unlawful conduct, by promulgating, or failing to promulgate, policies and
 20 procedures pursuant to which the unlawful conduct occurred, by failing and refusing to initiate and
 21 maintain proper and adequate policies, procedures and protocols, and by ratifying and condoning
 22 the unlawful conduct performed by agents, officers, deputies, medical providers and employees
 23 under their direction and control

1 18. Whenever and wherever reference is made in this Complaint to any act by
 2 Defendants DOES 1 through 50, such allegations and references shall also be deemed to mean the
 3 acts, and failures to act, of each Defendant DOE Officer, individually, jointly, or severally.
 4

FACTUAL ALLEGATIONS

5 19. On March 11, 2021, at approximately 8:00 a.m., Plaintiff's then wife, Brandi
 6 Crawford (hereinafter "Brandi"), went to the Las Cruces Police Department ("LCPD") and made
 7 a false report of domestic violence. Brandi knowingly reported that her husband, Plaintiff, had
 8 assaulted her last afternoon by strangling her and holding a gun to her head and even putting a gun
 9 in her mouth.
 10

11 20. At approximately 8:30 a.m., Mr. Strickland learned that his wife called 911 and
 12 made a false report about a domestic dispute. He knew Brandi made several scandalously false
 13 representations to law enforcement on previous occasions. Uncertain what to do, Plaintiff drove to
 14 the Las Cruces Police Department located at 217 East Picacho Avenue, Las Cruces, New Mexico,
 15 and parked in front of the station near his ex-wife's car. Plaintiff sat inside his pickup truck in front
 16 of the station for several minutes contemplating whether he should go inside to try and clear his
 17 name from any false accusations made by his ex-wife. Within minutes, Plaintiff decided walking
 18 into the police station was likely not the safest course action and began to leave the station because
 19 his ex-wife's allegations often included false representations of violence and firearms. Mr.
 20 Strickland was unarmed. The Las Cruces Police department even deployed a drone at
 21 approximately 8:59 a.m. and confirmed they only saw Mr. Strickland drinking water and looking
 22 at his cell phone while sitting in his truck.
 23

24 21. As Plaintiff drove out of the parking lot at approximately 9:04a.m, several patrol
 25 cars began to try and execute a high-risk felony stop, but Defendants failed to give any instruction
 26 to Plaintiff as he drove his Toyota Tacoma truck out of the LCPD parking lot. Consequently,
 27 Plaintiff swerved to avoid the police vehicle from striking his truck. Defendant Benoit immediately
 28 began ramming the back of Plaintiff's truck trying to perform a pit maneuver. Plaintiff, however,
 avoided the collision and thereafter continued to drove eastbound on Picacho Ave. Thereafter, a

1 brief vehicle pursuit ensued as Plaintiff continued driving at a low rate of speed and did not pull
 2 over because he feared for his life.

3 22. After several failed attempts to immobilize Plaintiff's truck, Defendants eventually
 4 performed pit maneuver that caused Plaintiff to lose control of the truck. After spinning out and
 5 turning a full 180 degrees, the truck stopped moving. Plaintiff was cornered as multiple patrol
 6 vehicles were accelerating towards him. Thereafter Plaintiff did not attempt to move or maneuver
 7 his vehicle.

8 23. Mere seconds after the pit maneuver immobilized Plaintiff's vehicle, and without
 9 warning, Defendants Savage, Frias, Krause, Benoit, and Lucero began firing over 90 lethal rounds
 10 at Plaintiff. The barrage of bullets from the semi-automatic weapons berated Plaintiff's truck and
 11 body. The lethal rounds fired by Defendants Savage, Frias, Krause, Benoit, and Lucero struck
 12 Plaintiff at least a dozen times, including in his pelvis, shoulder, neck, and back.

13 24. On information and belief, instead of providing medical care to Plaintiff,
 14 Defendants continued firing lethal rounds at Plaintiff. As a result of Defendants' egregious
 15 conduct, Plaintiff's injuries were exacerbated, thereby causing permanent, life-threatening,
 16 physical injuries, and extreme emotional anguish.

17 25. Brandi, thereafter, signed an notarized affidavit noting Mr. Strickland's innocence
 18 and the fact of her deliberate misrepresentations to police. Those charges were eventually dropped
 19 by the District Attorney's office only to be refiled after Mr. Strickland gave notice of this
 20 impending litigation.

21 26. Plaintiff also suffered extreme psychological distress and injury as a result of this
 22 ordeal. Plaintiff suffered and still suffers from symptoms including, but not limited to, fear, trauma,
 23 anxiety, stress, depression, humiliation, and emotional distress as a result of the incident.

24 27. During the incident, Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES
 25 1 through 25, inclusive, worked together as a group to back each other up, provide tacit approval
 26 for the incident, and support, assist, and encourage one another's actions.
 27

1 28. Moreover, each of the Defendant Officers failed to intervene or prevent harm when
2 his or her colleagues were depriving Plaintiff of his constitutional rights as stated in
3 this Complaint. By failing to intervene, each of the Defendant Officers additionally violated
4 Plaintiff's constitutional rights.

5 29. Plaintiff is informed and believes, and thereon alleges, Defendants violated
6 standard police practices and training during the performance of their duties as Las Cruces Police
7 Officers.

8 30. Plaintiff is informed and believes, and thereon alleges, that the Defendant Officers
9 failed to secure their semi-automatic firearms before initiating contact and engaging Plaintiff in a
10 vehicle pursuit. On information and belief, Defendants' firearms were on their laps, on the
11 passenger seat next to them, or on the floor in front of the passenger seat during the pursuit.

12 31. Plaintiff is informed and believes, and thereon alleges, that at least one Defendant
13 Officer never exited the patrol vehicle before grabbing his semi-automatic rifle from the passenger
14 seat and started shooting rounds through the front windshield of his patrol car.

15 32. Plaintiff is informed and believes, and thereon alleges, that after the pursuit ended,
16 at least one Defendant Officer exited his patrol car and immediately started shooting at Plaintiff's
17 truck, unloading a full magazine clip in a matter of seconds. On further information and belief,
18 that same Defendant Officer removed the empty clip, reloaded a new magazine clip, and without
19 any thought or hesitation, continued shooting lethal rounds at Plaintiff's truck.

20 33. Plaintiff is informed and believes, and thereon alleges, that during the vehicle
21 pursuit, Defendant Benoit lost control of his patrol car, which caused him to jump the curb and
22 crash into a parked car at a U.S. Post Office parking lot. On information and belief, after impact,
23 Defendant Benoit grabbed his semi-automatic rifle, crawled out of the passenger side door,
24 climbed on top of his patrol car, and without any assessment, began shooting at Plaintiff's truck.

25 34. The actions and omissions of Defendant City, Defendants Savage, Frias, Krause,
26 Benoit, Lucero, and DOES 1 through 50, inclusive, were objectively unreasonable under the
27 circumstances, without legal justification or other legal right, done under color of law, within the
28

1 course and scope of their employment as law enforcement officers, detectives, and/or public
 2 officials, and pursuant to unconstitutional customs, policies and procedures of Defendant City
 3 and/or other jurisdictions.

4 35. Plaintiff is informed and believes, and thereon alleges, that Defendant City and
 5 DOES 26 through 50, inclusive, breached their duty of care to the public in that they have failed
 6 to discipline Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1 through 25, inclusive.
 7 Their failure to discipline Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1 through
 8 25, inclusive, demonstrates the existence of an entrenched culture, policy and/or practice, of
 9 promoting, tolerating and/or ratifying with deliberate indifference, the making of improper
 10 detentions and arrests, the use of excessive force, and the failure to treat the serious medical needs
 11 of Dona Ana County Citizens.

12 36. Plaintiff is informed and believes, and thereon alleges, that members of the City of
 13 Las Cruces Police Department, including but not limited to, Defendants Savage, Frias, Krause,
 14 Benoit, Lucero, and DOES 1 through 25, inclusive, and/or each of them, have individually and/or
 15 while acting in concert with one another, engaged in a repeated pattern and practice of using
 16 excessive, arbitrary and/or unreasonable force against individuals, including but not limited to,
 17 Plaintiff.

18 37. Plaintiff is informed and believes, and thereon alleges, that the City of Las Cruces
 19 Police Department knew or had reason to know, by way of actual or constructive notice, of the
 20 aforementioned policy, culture, pattern and/or practice, and the complained of conduct and
 21 resultant injuries/violations. On information and belief, Defendant City had actual or constructive
 22 notice that Defendants Savage and Frias both had extensive histories of sustained violations of
 23 department policies. On information and belief, Defendant City failed to take any action to address
 24 the repeated patterns of inappropriate conduct demonstrated by Officers Savage and Frias. Such
 25 failure not only demonstrates Defendant Officers' complete disregard for rights, safety and welfare
 26 of the citizens of Las Cruces, but it also demonstrates Defendant City's complacency and
 27 ratification of their conduct.

38. At all material times, the actions and omissions of each Defendant were conscience-shocking, reckless, and deliberately indifferent to Plaintiff's rights, and in the alternative, negligent and objectively unreasonable, and thereby, unlawful.

DAMAGES

39. As a consequence of Defendants' violations of Plaintiff's federal civil rights under 42 U.S.C. §1983 and the Fourth and Fourteenth Amendments, Plaintiff was physically, mentally, emotionally, and financially, injured and damaged as a proximate result of Defendants' wrongful conduct.

40. Plaintiff found it necessary to engage the services of private counsel to vindicate his rights under the law. Plaintiff is therefore entitled to an award of attorneys' fees and/or costs pursuant to statute(s) in the event that he is the prevailing party in this action under 42 U.S.C. §§ 1983 and 1988. Plaintiff is also entitled to punitive damages under 42 U.S.C. §§ 1983 and 1988.

FIRST CAUSE OF ACTION

(42 U.S.C. Section 1983)

**(Violation of the Fourth Amendment of the U.S. Constitution - Excessive Force)
(Plaintiff JONATHAN STRICKLAND Against Defendants SAVAGE, FRIAS,
KRAUSE, BENOIT, LUCERO, and DOES 1-25)**

41. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 40 of this Complaint.

42. 42 U.S.C. § 1983 provides in part, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit at equity, or other proper proceeding for redress.”

43. Plaintiff has firmly established rights under the Fourth and Fourteenth Amendments to be free from official infliction of physical abuse, assault, battery, and intentional infliction of

1 emotional distress, unreasonable search and seizure, and to be free from excessive force being used
2 against him.

3 44. Defendants' actions as described herein resulted in the deprivation of these
4 constitutional rights.

5 45. Defendants, acting in the performance of their official duties, used force against
6 Plaintiff that was unjustified, entirely unreasonable, and thereby, excessive.

7 46. Plaintiff posed no credible threat of harm to Defendants Savage, Frias, Krause,
8 Benoit, Lucero, or any officer or other, when Defendants fired more than fifty (90) lethal rounds
9 from their semi-automatic rifles at Plaintiff's truck without assessment, warning, or provocation.

10 47. Defendants' conduct was grossly unjustified under the circumstances, and thereby,
11 intolerable. Plaintiff was unarmed, his truck immobilized from the pit maneuver, and was
12 surrounded by patrol cars and armed officers. Nonetheless, Defendants made no assessment, gave
13 no warming or verbal commands and recklessly fired more fifty (90) lethal rounds at Plaintiff's
14 truck.

15 48. There was no need for any of the force inflicted against Plaintiff. The use of deadly
16 force exercised by Defendants Savage, Frias, Krause, Benoit, and Lucero, and the subsequent uses
17 of lethal force by Defendants, when Plaintiff posed no threat of harm to officers or others was
18 unjustified and constitutes a grossly unreasonable seizure under the Fourth Amendment.

19 49. At no point did any Defendant Officer intervene to stop the other Defendant
20 Officers from using deadly force on Plaintiff that was clearly excessive under the circumstances.

21 50. In using excessive and unjustified force, Defendants Savage, Frias, Krause, Benoit,
22 and Lucero, were acting in accordance with the widespread informal practices and customs
23 maintained by the City of Las Cruces Police Department.

24 51. Defendants, acting under the color of statute, ordinances, regulations, customs and
25 usages of the State of New Mexico, knew that the use of deadly force in these circumstances was
26 unjustified, and was thereby illegal under clearly established law.

52. The conduct alleged herein caused Plaintiff to be deprived of his civil rights that are protected under the United States Constitution. The conduct alleged herein has also legally, proximately, foreseeably, and actually caused Plaintiff to suffer life-threatening physical injuries, emotional distress, pain and suffering, loss of income, medical expenses, fear, trauma, and humiliation, and further damages according to proof at the time of trial.

53. The conduct of Defendants was willful, malicious, intentional, deliberately indifferent, and done with a reckless disregard to the constitutionally protected rights, welfare, and safety of Plaintiff.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

(42 U.S.C. Section 1983)

**(Violation of the Fourteenth Amendment of the U.S. Constitution – Denial of Med Care)
(Plaintiff JONATHAN STRICKLAND Against Defendants SAVAGE, FRIAS, KRAUSE,
BENOIT, LUCERO, and DOES 1-25)**

54. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1 through 53 of this Complaint.

55. 42 U.S.C. § 1983 provides in part, “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit at equity, or other proper proceeding for redress.”

56. Defendants' purposeful denial of medical care deprived Plaintiff of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

1 57. Defendants' purposeful denial of medical care further deprived Plaintiff of his right
2 to be secure in his person against unreasonable searches and seizures as guaranteed by the Due
3 Process Clause under the Fourteenth Amendment of the United States Constitution.

4 58. Defendants knew that failure to provide timely medical treatment to Plaintiff could
5 result in further significant injury and the unnecessary and wanton infliction of pain by
6 exacerbating the life-threatening injuries that Defendants caused by shooting dozens of bullets,
7 striking Plaintiff over a dozen times. Defendants nevertheless disregarded Plaintiff's serious
8 medical need, thereby causing Plaintiff great bodily harm, conscious pain and suffering for an
9 extended period of time, and exacerbated Plaintiff's life-threatening injuries.

10 59. Defendants' actions and omissions as described herein resulted in the deprivation
11 of these constitutional rights.

12 60. Defendants, while acting in the performance of their official duties, used force
13 against Plaintiff that was unjustified, entirely unreasonable, and thereby excessive, such that the
14 failure to provide Plaintiff access to medical care immediately thereafter was deliberately
15 indifferent to Plaintiff's serious medical need and thereby shocks the conscience.

16 61. In using excessive and unjustified force, and by failing to provide Plaintiff access
17 to immediate medical care, Defendant Officers were acting in accordance with the widespread
18 informal practices and customs maintained by the City of Las Cruces Police Department, as
19 elaborated upon in paragraphs 75-82.

20 62. Defendants, acting under the color of statute, ordinances, regulations, customs and
21 usages of the State, knew that failure to provide Plaintiff access to immediate medical care was
22 deliberately indifferent to Plaintiff's serious medical need and violated clearly established law.

23 63. The conduct alleged herein caused Plaintiff to be deprived of his civil rights that
24 are protected under the United States Constitution. The conduct alleged herein has also legally,
25 proximately, foreseeably, and actually caused Plaintiff to suffer life-threatening physical injuries,
26 emotional distress, pain and suffering, loss of income, medical expenses, fear, trauma, and
27 humiliation, and further damages according to proof at the time of trial.

1 64. The conduct of Defendants was willful, malicious, intentional, deliberately
 2 indifferent, and done with a reckless disregard to the constitutionally protected rights, welfare, and
 3 safety of Plaintiff.

4 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

5 **THIRD CAUSE OF ACTION**

6 **(42 U.S.C. § 1983)**

7 **(Monell - Municipal Liability for Unconstitutional Custom or Policy)
 Plaintiff JONATHAN STRICKLAND Against Defendants CITY and DOES 26-50)**

8 65. Plaintiff hereby realleges and incorporates by reference herein paragraphs 1
 9 through 64 of this Complaint.

10 66. On information and belief, the conduct of Defendants Savage, Frias, Krause,
 11 Benoit, Lucero, and DOES 1-25, inclusive, individually and as peace officers, was ratified by
 12 Defendant City's police department supervisorial officers, Defendants DOES 26 through 50,
 13 inclusive.

14 67. On information and belief, Defendants were not disciplined for using unjustified
 15 lethal force against Plaintiff, nor for their violations of department policy.

16 68. Prior to, and continuing from, March 11, 2021, Defendants, individually and as
 17 peace officers, deprived Plaintiff of the rights and liberties secured to him by the Fourth and
 18 Fourteenth Amendments to the United States Constitution in that said Defendants and their
 19 supervising and managerial commanders, employees, agents, and representatives, acted with gross
 20 negligence, and with reckless disregard and deliberate indifference to the rights and liberties of the
 21 public in general, and of Plaintiff, and of persons in his class, situation, or comparable position in
 22 particular, knowingly maintained, enforced, and applied an official recognized custom, policy,
 23 and/or practice of:

- 24 a. Employing and retaining as police officers, detectives, and other personnel,
 25 including Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1
 26 through 25, individually and as peace officers; who at all material times knew
 27 or reasonably should have known, had dangerous propensities for abusing their

- 1 authority and for mistreating citizens by failing to follow written Las Cruces
2 Police Department policies, including the use of excessive force and respecting
3 the protections afforded to citizens under the Fourth Amendment;
- 4 b. Of inadequately supervising, training, controlling, assigning, and disciplining
5 Defendant City police officers, detectives, and other personnel, including
6 Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1 through 25, who
7 Defendant City knew, or in the exercise of reasonable care, should have known,
8 had the aforementioned propensities and character traits, including the
9 propensity for violence and the use of excessive force;
- 10 c. By maintaining grossly inadequate procedures for reporting, supervising,
11 investigating, reviewing, disciplining and controlling the intentional misconduct
12 of Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, who are
13 police officers for Defendant City;
- 14 d. By failing to discipline Defendants Savage, Frias, Krause, Benoit, Lucero, and
15 DOES 1-25, for their intolerable conduct, including but not limited to, unlawful
16 seizures and excessive force;
- 17 e. By ratifying the intentional misconduct of Defendants Savage, Frias, Krause,
18 Benoit, Lucero, and DOES 1-25, and other officers who are police officers of
19 Defendant City;
- 20 f. By having and maintaining an unconstitutional policy, custom and practice of
21 arresting individuals without probable cause or reasonable articulable suspicion,
22 and unjustifiably using excessive force, which also is demonstrated by the
23 grossly inadequate training regarding these subjects. The policies, customs and
24 practices of Defendants were done with a deliberate indifference to individuals'
25 safety and rights; and
- 26 g. By failing to properly investigate claims of unlawful seizures and excessive
27 force by Defendant City police officers.
- 28

1 69. By reason of the aforementioned policies and practices of Defendants, individually
 2 and as peace officers, Plaintiff was severely harmed, traumatized, and sustained devastating, life-
 3 altering injuries, when Defendants Savage, Frias, Krause, Benoit and Lucero discharged dozens of
 4 lethal rounds without any warning or provocation using department-issued semi-automatic rifles,
 5 and failed to provide timely medical care for Plaintiff's injuries.

6 70. Consequently, Plaintiff sustained physical, emotional, and financial injuries,
 7 whereby Plaintiff was subjected to extreme pain and suffering and lost earning capacity for which
 8 Plaintiff is entitled to recover damages. Defendants, individually and as peace officers, together
 9 with various other officials, whether named or unnamed, had either actual or constructive
 10 knowledge of the deficient policies, practices and customs alleged in the paragraphs above. Despite
 11 having knowledge, as stated above, these Defendants condoned, tolerated, and through actions and
 12 inactions, ratified, such policies. Said Defendants also acted with deliberate indifference to the
 13 foreseeable effects and consequences of these policies with respect to the constitutional rights of
 14 Plaintiff and other individuals similarly situated.

15 71. By perpetrating, sanctioning, tolerating, and ratifying the heinous and outrageous
 16 conduct and other grossly wrongful acts, Defendants, individually and as peace officers, acted with
 17 an intentional, reckless, and callous disregard for the rights of Plaintiff. Each of their actions and
 18 inactions was willful, wanton, oppressive, malicious, fraudulent, and extremely offensive, and
 19 unconscionable to any person of normal sensibilities.

20 72. Furthermore, the policies, practices and customs implemented, maintained, and
 21 tolerated by Defendants, individually and as peace officers, were affirmatively linked to, and were
 22 the significantly influential force behind, the injuries inflicted upon Plaintiff.

23 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.
 24 ///
 25 ///
 26
 27 **FOURTH CAUSE OF ACTION**
 28 **(Battery/Assault)**

**(Plaintiff JONATHAN STRICKLAND Against Defendants CITY, SAVAGE,
FRIAS, KRAUSE, BENOIT, LUCERO, and DOES 1-25)**

73. Plaintiff realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 72 of this Complaint.

74. Defendants touched Plaintiff with the intention and purpose to harm or offend him.

75. Plaintiff did not consent to the touching and was permanently harmed by it.

76. A reasonable person in Plaintiff's situation would have been offended by the touching.

77. The present action is brought pursuant to sections 41-4-1, *et seq.*, of the New Mexico Statutes. Pursuant to section 41-4-12 of the New Mexico Statutes, as public employees, Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, are liable for injuries caused by their acts or omissions to the same extent as a private person. At all times mentioned herein, Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, were acting within the course and scope of their employment and/or agency with Defendant City. As such, Defendant City is liable in respondeat superior for the injuries caused by the acts and omissions of Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, pursuant to the New Mexico Statutes.

78. Defendants' conduct caused Plaintiff to suffer physical injury, emotional distress, pain and suffering, loss of income, medical expenses, fear, trauma, and humiliation, and further damages according to proof at the time of trial.

79. The conduct of Defendants was willful, malicious, intentional, deliberately indifferent, and done with a reckless disregard to the constitutionally protected rights, welfare, and safety of Plaintiff.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

**(Plaintiff JONATHAN STRICKLAND Against Defendants CITY, SAVAGE,
FRIAS, KRAUSE, BENOIT, LUCERO, and DOES 1-25)**

80. Plaintiff realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 79 of this Complaint.

81. Defendants' conduct as described herein was outrageous.

82. Defendants intended to cause Plaintiff emotional distress.

83. Defendants acted with reckless disregard of the probability that Plaintiff would suffer emotional distress, knowing that Plaintiff was consciously present when the conduct occurred.

84. Plaintiff suffered severe emotional distress from Defendants' harassment and heinous conduct.

85. The present action is brought pursuant to sections 41-4-1, *et seq.*, of the New Mexico Statutes. Pursuant to section 41-4-12 of the New Mexico Statutes, as public employees, Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, are liable for injuries caused by their acts or omissions to the same extent as a private person. At all times mentioned herein, Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, were acting within the course and scope of their employment and/or agency with Defendant City. As such, Defendant City is liable in respondeat superior for the injuries caused by the acts and omissions of Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, pursuant to the New Mexico Statutes.

86. Defendants' conduct as described herein was a substantial factor in causing Plaintiff's severe emotional distress.

87. Defendants' conduct caused Plaintiff to suffer physical injury, emotional distress, pain and suffering, loss of income, medical expenses, fear, trauma, and humiliation, and further damages according to proof at the time of trial.

88. The conduct of Defendants was willful, malicious, intentional, deliberately indifferent, and done with a reckless disregard to the constitutionally protected rights, welfare, and safety of Plaintiff.

1 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

2 **SIXTH CAUSE OF ACTION**

3 **(Negligence)**

4 **(Plaintiff JONATHAN STRICKLAND Against Defendants CITY, SAVAGE, FRIAS,
KRAUSE, BENOIT, LUCERO, and DOES 1-50)**

5 89. Plaintiff realleges and incorporates by reference herein the allegations set forth in
6 paragraphs 1 through 88 of this Complaint, except for any and all allegations of intentional,
7 malicious, extreme, outrageous, wanton, and oppressive conduct by Defendants, and any and all
9 allegations requesting punitive damages.

10 90. The present action is brought pursuant to sections 41-4-1, *et seq.*, of the New
11 Mexico Statutes. Pursuant to section 41-4-12 of the New Mexico Statutes, as public employees,
12 Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, are liable for injuries caused
13 by their acts or omissions to the same extent as a private person. At all times mentioned herein,
14 Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, were acting within the course
15 and scope of their employment and/or agency with Defendant City. As such, Defendant City is
16 liable in respondeat superior for the injuries caused by the acts and omissions of Defendants
17 Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25, pursuant to the New Mexico Statutes.

18 91. Defendants, as public employees, are liable for negligent pre-arrest tactics that
19 precede the use of deadly force. Defendants fired more than fifty rounds at Plaintiff. Each trigger
20 pull constitutes a use of deadly force.

21 92. Defendants acted negligently in their use of deadly force against Plaintiff, including
22 but not limited to: (a) failing to secure their firearms before engaging in a vehicle pursuit; (b)
23 failing to assess the situation after the pit maneuver immobilized Plaintiff's truck; (c) failing to get
24 out of the patrol car before discharging nearly a dozen rounds from the driver's seat, through the
25 windshield; (d) recklessly losing control of a patrol car and crashing into a parked car; (e) climbing
26 on top of the patrol car after crashing it; (f) failing to give any warnings and/or commands before
27 exercising such a high level of force, and thus never giving Plaintiff an opportunity to comply; and
28

1 (g) failing to provide Plaintiff medical care for the several gunshot wounds Defendant Officers
2 inflicted as described herein.

3 93. Defendants knew, or should have known, that shooting dozens of bullets at a
4 person will likely cause serious, life-threatening injuries caused by the gunshot wounds. Moreover,
5 Defendants knew, or should have known, that a person surrounded by patrol cars and armed
6 officers, sitting cornered inside a truck that has been completely immobilized with no way to flee,
7 such as Plaintiff here, cannot pose a credible threat to the safety of any officer or other, and cannot
8 reasonably be considered a flight risk. Moreover, Defendants knew, or should have known, that
9 immediate medical care should be promptly provided to any person subjected to lethal force, such
10 as Plaintiff. Furthermore, Defendants knew, or should have known, that ever shot fired from their
11 weapon constitutes deadly force, and that using deadly force against an unarmed person who poses
12 no threat to the safety of officers or others, such as Plaintiff, is unreasonable, excessive, and is
13 thus, unconstitutional.

14 94. Defendants Savage, Frias, Krause, Benoit, Lucero, and DOES 1-25 acted
15 negligently in their use of deadly force against Plaintiff, including but not limited to: (a) firing
16 dozens of bullets from semi-automatic weapons; and (b) failing to provide medical care to Plaintiff
17 for the injuries caused by Defendant Officers' uses of force as described herein.

18 95. Defendant Officers knew, or should have known, that a person struck by bullets
19 over a dozen times with severe injuries that render him physically immobilized, is bleeding
20 excessively and experiencing severe levels of pain, and remains under the control of five officers,
21 such as Plaintiff, cannot pose a credible threat to the safety of any officer or other, and cannot
22 reasonably be considered a flight risk when the sustained injuries render the person physically
23 incapable of moving his legs, and thereby cannot even stand up, let alone be a flight risk. Moreover,
24 Defendant Officers knew, or should have known, that immediate medical care should be promptly
25 provided to any person subjected to officers' force and sustained injuries as a result therefrom,
26 such as Plaintiff. Furthermore, Defendant Officers knew, or should have known, that uses force
27 such as Plaintiff. Furthermore, Defendant Officers knew, or should have known, that uses force
28

1 against an unarmed person, who poses no credible threat to the safety of officers or others, such as
 2 Plaintiff, is objectively unreasonable, grossly excessive, and thereby, unconstitutional.
 3

4 96. Additionally, Defendant Officers are liable for failing to intervene when fellow
 5 officers violate the constitutional rights of another.
 6

7 97. Defendant Officers negligently failed to intervene when Plaintiff's Fourth and
 8 Fourteenth Amendment rights were violated by Defendants when: (a) Defendant Officers
 9 discharged over fifty (50) lethal rounds at Plaintiff's truck, striking Plaintiff at least a dozen times;
 10 and (b) failing to provide Plaintiff prompt access to medical care despite Defendant Officers'
 11 knowledge that Plaintiff was severely injured, experiencing unbearable pain, and since he was in
 12 the custody and control of the officers, Plaintiff's access to medical care was entirely dependent
 13 on the Defendant Officers. Defendant Officers knew, or should have known, that failing to
 14 intervene when a fellow officer violates the constitutional rights of another, through use of
 15 excessive force or otherwise, is a breach of duty and exposes them to liability. It was clear that the
 16 use of force was excessive and was harming Plaintiff, yet none of the Defendant Officers
 17 intervened, or even attempted to intervene, at any point, which resulted in a continued deprivation
 18 of Plaintiff's rights under the Fourth and Fourteenth Amendments, and subjected Plaintiff to
 19 immense physical and emotional suffering.

20 98. Furthermore, Defendants City and DOES 26-50, inclusive, are liable for their
 21 failure to adequately supervise, hire, train, and/or discipline City of Las Cruces police officers,
 22 including Defendant Officers and DOES 1-25, inclusive, whereby Defendants City and DOES 26-
 23 50, knew, or in the exercise of reasonable care should have known, that Defendant Officers and
 24 DOES 1-25, acted negligently when Defendant Officers fired dozens of rounds from their
 25 department-issued semi-automatic rifles, denied medical care to Plaintiff despite knowing that he
 26 had a serious medical need, and by failing to intervene when other officers took action against
 27 Plaintiff that was in clear violation of his constitutional rights.

28 99. Plaintiff was grievously harmed, and Defendants' negligence was a substantial
 factor in causing his harm.

100. Defendants' negligent conduct caused Plaintiff to suffer physical injury, emotional distress, pain and suffering, loss of income, medical expenses, fear, trauma, and humiliation.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

JURY DEMAND

101. Plaintiff hereby demands a jury trial in this civil rights action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief, as follows:

1. For general damages in a sum according to proof;
 2. For special damages in a sum according to proof;
 3. For punitive damages in a sum according to proof as to Defendants SAVAGE, FRIAS, KRAUSE, BENOIT, LUCERO, and DOES 1-25;
 4. For reasonable attorneys' fees pursuant to 42 U.S.C. Section 1988;
 5. For any and all statutory damages allowed by law;
 6. For cost of suit herein incurred; and
 7. For such other and further relief as the Court deems just and proper.

Dated: February 7, 2023

BURRIS, NISENBAUM, CURRY, & LACY LLP

By: /s/John L. Burris

JOHN L. BURRIS

DeWITT M. LACY

JULIA N. QUESADA

LENA P. ANDREWS

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JONATHAN STRICKLAND